NOTICE: This opinion is subject to formal revision before publication in the bound volumes of NLRB decisions. Readers are requested to notify the Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, of any typographical or other formal errors so that corrections can be included in the bound volumes.

Stamford Plaza Hotel & Conference Center and Stamford Plaza, LP, a Joint and/or Single Employer *and* United Food and Commercial Workers Union, Local 371. Case 01–CA–098145

May 9, 2013 DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS GRIFFIN AND BLOCK

This is a refusal-to-bargain case in which the Respondent is contesting the Union's certification as bargaining representative in the underlying representation proceeding. Pursuant to a charge filed by the Union on February 12, 2013, the Acting General Counsel issued the complaint on March 6, 2013, alleging that the Respondent has violated Section 8(a)(5) and (1) of the Act by refusing the Union's request to recognize and bargain following the Union's certification in Case 34-RC-081443. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g). Frontier Hotel, 265 NLRB 343 (1982).) The Respondent filed an answer, admitting in part and denying in part the allegations in the complaint, and asserting an affirmative defense.

On March 28, 2013, the Acting General Counsel filed a Motion for Summary Judgment and a supporting memorandum. On April 2, 2013, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response.

Ruling on Motion for Summary Judgment

The Respondent admits its refusal to bargain, but contests the validity of the certification on the basis of the issues raised in the representation proceeding, including its assertion that the President's recess appointments are constitutionally invalid and the Board lacks the authority to act. The Respondent further asserts that the Board had no valid quorum when it issued its decision in *Specialty Healthcare & Rehabilitation Center of Mobile*, 357 NLRB No. 83 (2011), and therefore the unit certification in the underlying representation case was improper. ¹

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).

Accordingly, we grant the Motion for Summary Judgment.²

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent has provided hotel guest room and suite accommodations, meeting rooms, and other event space at its Stamford, Connecticut facility (the facility).

At all material times, Stamford Plaza Hotel & Conference Center and Stamford Plaza, LP have been affiliated business enterprises with common officers, ownership, directors, management, and supervision; have formulated and administered a common labor policy; have shared common premises and facilities; have provided services for and made sales to each other; have interchanged personnel with each other; have interrelated operations with common sales; and have held themselves out to the public as a single-integrated business enterprise.

Based on its operations described above, Stamford Plaza Hotel & Conference Center and Stamford Plaza, LP constitute a single-integrated business enterprise and a single employer within the meaning of the Act.

At all material times, Stamford Plaza Hotel & Conference Center and Stamford Plaza, LP have been parties to a contract which provides that Stamford Plaza, LP is the agent for Stamford Plaza Hotel & Conference Center in connection with hiring banquet employees for its facility located at 2701 Summer Street, Stamford, Connecticut.

At all material times, Stamford Plaza Hotel & Conference Center has possessed control over the labor relations policy of Stamford Plaza, LP and administered a common labor policy with Stamford Plaza, LP for the banquet employees of Stamford Plaza Hotel & Conference Center.

¹ For the reasons stated in *Bloomingdale's Inc.*, 359 NLRB No. 113 (2013), these arguments are rejected. Finally, in its answer to the complaint, the Respondent alleges as an affirmative defense the statute of limitations. However, the Respondent has not presented any factual or legal basis in support of this defense, and its answer admits the complaint allegations that it has refused to bargain with the Union since

about December 6, 2012, and that the charge was filed on February 12, 2013. We therefore find that the Respondent's 10(b) defense is without merit.

² The Respondent's request that the complaint be dismissed in its entirety is therefore denied.

At all material times, Stamford Plaza Hotel & Conference Center and Stamford Plaza, LP have been joint employers of the banquet employees of Stamford Plaza Hotel & Conference Center.

During the 12-month period ending January 31, 2013, the Respondent, in conducting its operations described above, derived gross revenues in excess of \$500,000 and purchased and received at its facility goods valued in excess of \$50,000 directly from points located outside the State of Connecticut.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union, United Food and Commercial Workers Union, Local 371, is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following a representation election held on June 22, 2012, in Case 34–RC–081443, the Union was certified on September 12, 2012, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time banquet housemen employed by Stamford Hospitality, LP d/b/a Stamford Plaza Hotel and Conference Center, LP and Stamford Plaza, LP, joint employers, at the Stamford, Connecticut facility; but excluding office clerical employees, all other employees, and guards, professional employees and supervisors as defined in the Act.

The Union continues to be the exclusive collectivebargaining representative of the unit employees under Section 9(a) of the Act.

B. Refusal to Bargain

By letters dated December 6, 2012, and January 3, 2013, the Union requested that the Respondent bargain collectively with the Union as the exclusive collective-bargaining representative of the unit. Since about December 6, 2012, the Respondent has failed and refused to recognize and bargain with the Union. We find that this failure and refusal constitutes an unlawful failure and refusal to recognize and bargain with the Union in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By failing and refusing since about December 6, 2012, to recognize and bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning

of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); accord: *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964).

ORDER

The National Labor Relations Board orders that the Respondent, Stamford Plaza Hotel & Conference Center and Stamford Plaza, LP, a Joint and/or Single Employer, Stamford, Connecticut, its officers, agents, successors, and assigns, shall

- 1. Cease and desist from
- (a) Failing and refusing to recognize and bargain with United Food and Commercial Workers Union, Local 371 as the exclusive collective-bargaining representative of the employees in the bargaining unit.
- (b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.
- 2. Take the following affirmative action necessary to effectuate the policies of the Act.
- (a) On request, bargain with the Union as the exclusive collective-bargaining representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time banquet housemen employed by Stamford Hospitality, LP d/b/a Stamford Plaza Hotel and Conference Center, LP and Stamford Plaza, LP, joint employers, at the Stamford, Connecticut facility; but excluding office clerical employees, all other employees, and guards, professional employees and supervisors as defined in the Act.

(b) Within 14 days after service by the Region, post at its facility in Stamford, Connecticut, copies of the at-

tached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 1, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since about December 6, 2012.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. May 9, 2013

Mark Gaston Pearce,	Chairman
Richard F. Griffin, Jr.,	Member
Sharon Block,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to recognize and bargain with United Food and Commercial Workers Union, Local 371 as the exclusive collective-bargaining representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the following bargaining unit:

All full-time and regular part-time banquet housemen employed by us at our Stamford, Connecticut facility; but excluding office clerical employees, all other employees, and guards, professional employees and supervisors as defined in the Act.

STAMFORD PLAZA HOTEL & CONFERENCE CENTER AND STAMFORD PLAZA, LP, A JOINT AND/OR SINGLE EMPLOYER

³ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."